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NOTES OF CASES.

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**Trespass by Necessity.**—It is said in the *London Law Journal* of Dec. 30, 1911: "We probably have not yet seen the end of the case of *Cope v. Sharpe*, which will surely go down to history as one of the great legal battles of our time. It has been tried thrice in the County Court (on one occasion the jury disagreed) and twice each in the Divisional Court and the Court of Appeal. This last time the Lords Justices, by a majority, reversed the decision of the Divisional Court and restored the judgment of the County Court; but with such a division of judicial opinion it is likely that the sturdy litigants will take their suit to the highest tribunal in the land. The matter at issue is small, but a most important principle of law is involved. The plaintiff, who had leased to the defendant the shooting rights over a part of his land, sued him for damages for trespass because, a fire having broken out on the leased portion, the gamekeeper of the defendant entered on the plaintiff's land and set light to the heather in order to get control of the conflagration. The legal problem which arises is whether a trespass in such a case is justifiable and gives no ground for damages. The jury on the last hearing at the county Court found, in answer to the question specifically left to them by the judge, that the gamekeeper's action was not in fact necessary to extinguish the fire, but was reasonably necessary. On this finding the judge entered judgment for the defendant, and the majority of the Court of Appeal have held that he was right. The other judges, however, before whom the case has come, have held that a trespass can only be justified when it has in fact served to effect a proper object and was, in fact, necessary to that object. It is stated in an old Elizabethan case, *Maleverer v. Spink*, that 'a man may justify pulling down a house on fire for the safety of neighboring houses,' and in this case the defendant's servant was prompted by the special duty of saving his master's property. In no case has it been actually ruled that where a man is trespassing to protect his own property he must prove necessity in fact to justify his act, and Lord Justice Buckley distinguished the cases where there were obiter dicta to that effect by pointing out that here there was the special relation between plaintiff and defendant of lessor and tenant, so that the servant was not in the position of a third party trespassing. But, apart from this special circumstance, there is much to be said for preferring the rule that the Court of Appeal supports, by which the ordinary consequences of trespass are displaced when all that is done is what a reasonable man would do to protect his own or his master's property or his life. It would seem a proper servitude of the property to be subject to such a case of necessity.